United Nations A/55/296

General Assembly

Distr.: General
15 August 2000
English
Original: English/French/Arabic

Fifty-fifth session
Item 116 (b) of the provisional agenda*
Human rights questions: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Human rights and cultural diversity

Report of the Secretary-General**

I. Introduction

1. The present report is submitted pursuant to General Assembly resolution 54/160 of 17 December 1999, entitled "Human rights and cultural diversity".

2. In the above-mentioned resolution, the General Assembly requested the Secretary-General to prepare a report on human rights and cultural diversity, taking into account the views of Member States, relevant United Nations agencies and non-governmental organizations, for submission to the General Assembly at its fifty-fifth session; and decided to continue consideration of the question at its fifty-fifth session under the sub-item entitled "Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms".

3. In accordance with paragraph 5 of the resolution, the Secretary-General, in both a note verbale and letter dated 3 May 2000, invited Member States, relevant United Nations agencies and non-governmental organizations to transmit any information and comments relevant to the subject matter.

4. As at 25 July 2000, the following replies had been received.

II. Replies received from Governments

Chile

[Original: Spanish]
[17 May 2000]

5. [...] Although, all persons are born free and equal in dignity and rights (Constitution of Chile, Article 1), there are nevertheless people who, although equal, are different, by reason of origin, sex or disability, or because they are children, ill or elderly etc. It is this difference or diversity that in many cases makes them vulnerable to discrimination, which means that they do not have the same rights as the majority. Significant progress has been made in this area since 1990, when democracy was restored. Legislation has been enacted on behalf of these minorities, in particular indigenous people, the disabled, women and children. A start has thus been made on resolving all traditional situations of discrimination and inequality, which not only result in

* A/55/150.
** In accordance with General Assembly resolution 54/248, sect. C, para. 1, this report is being submitted on 15 August 2000 so as to include as much updated information as possible.

00-61095 (E) 210900

injustice but are unconstitutional. Unless they are resolved, full democracy cannot be achieved.

6. [...] According to the Ministry of Education Act No. 18,956, article 9, the Division of Cultural Extension is responsible for encouraging cultural development, artistic creativity and the growth of Chile's cultural heritage. The Artistic and Cultural Development Fund was established under this article to finance in whole or in part artistic and cultural projects in any cultural area. Funds to support cultural initiatives used to be part of the Ministry of Education and were very useful for small grass-roots or regional cultural or artistic groups.

7. As regards the protection of the cultural heritage, Supreme Decree No. 252, published on 7 June 2000, proclaims Chilean Cultural Heritage Day, which aims to promote awareness of the importance of our cultural heritage at every level of society.

8. [...] Participation in the social and cultural life of municipalities is important, since such participation entails the shared interests and needs of those who live in the same locality. Title IV ("Civic participation") of the Organization Act establishes the task of advising a municipality in order to ensure the involvement of community organizations, whether neighbourhood groups or groups engaged in activities relating to the municipality's economic, social and cultural progress.

9. Indigenous Peoples Act No. 19,253 was passed in order to recognize, protect, promote and develop indigenous peoples. The National Indigenous Development Corporation was established as a decentralized public service whose function is to promote, coordinate and, where necessary, implement State action to further the comprehensive development of indigenous persons and communities, particularly in the economic, social and cultural fields, and to promote their participation in national life. The Act discriminates positively in favour of indigenous persons and groups, who have been segregated and robbed of their lands and culture since the conquest, have lived in a state of extreme poverty and have had no chance of attaining equality with the country's other inhabitants. One of the duties of the Corporation is to promote indigenous cultures and language and cross-cultural bilingual educational systems, in coordination with the Ministry of Education.

10. The Alliance's policy statements consistently demonstrate concern for indigenous people and set very challenging goals, including the development and expansion of effective, ongoing cross-cultural bilingual education and continuous dissemination of information in the mass media concerning indigenous customs and values, which enrich society. Legal studies now aim at initiating the reforms necessary to harmonize international indigenous rights standards with Chile's domestic law. A recent Constitutional amendment, submitted to the Congress, aims to ensure the constitutional recognition of indigenous peoples and thus their political participation in the State. The amendment is being considered as a matter of urgency.

11. In the past, indigenous people would rarely enter into litigation on an equal footing with non-indigenous parties. Generally speaking, indigenous people were denied a defence because they did not understand "Chilean" laws. Now indigenous customary law is recognized in the new Indigenous Peoples Act, which makes it possible to resolve disputes among indigenous parties and for ordinary courts to recognize those decisions.

12. Similarly, very significant advances have been made on behalf of women: an amendment to the Constitution and the recognition of and legislation on family violence, decriminalization of adultery (for which only the woman used to be punished), and new legislation on descent, removing all distinctions between children.

13. [...] Although significant progress has been made in ensuring equality for women in society, there are still differences between what is paid to men and women for the same responsibilities or work. A 1999 constitutional amendment replacing "All men are equal ..." by "All persons ...", while certainly highly symbolic, also represents the principle of equality between men and women. The Government's programme contains a number of proposals to improve women's standard of living, including programmes on justice, health, education and participation.

14. [...] The most important tasks pending are the following: harmonization of domestic law with the international treaties ratified by Chile; establishment of the Office of Women's Ombudsman, as part of the Office of the Ombudsman; legislation to regulate the system of maintenance payments; regularization of common law marriages, in order to protect the family produced in those marriages; labour reforms giving female temporary employees equal access to the social

insurance system; revision and amendment of the legislation on family violence.

15. [...] In 1999, the distinction between children born outside wedlock and those born within wedlock was abolished. It was a distinction that led to open discrimination in law against so-called "natural" children. All children now enjoy equality before the law. Nursery education has been given constitutional status, which means that all children have equal access to education. Adoptive parents now have the right to parental benefits, one result of which is to make the complex process of adoption easier.

16. [...] In 1994, Act No. 19,284 was promulgated, which provided for the full social integration of disabled persons. According to article 1, the purpose of the Act is to ensure the full integration of persons with disabilities into society and guarantee them full enjoyment of their rights under the Constitution and the law. The Act stipulates that the disabled shall enjoy equality of opportunity in their access to culture, information, communications and physical spaces, and full access to education. The Act also established a National Disability Fund, an independent corporation with full powers of acquisition, and power to exercise rights and contract obligations, in order to administer resources on behalf of persons with disabilities.

17. [...] Legislation has been introduced on behalf of women and children, the disabled and indigenous peoples. Legislation on behalf of minorities is a means of directly granting them recognition and encouraging equal participation in society, access to education, health and justice and, most important, access to culture — in some cases of indigenous people, to their own culture.

18. Significant progress has been made in human rights and cultural diversity. The Government's policy base indicates and demonstrates that it is on the way to creating a fairer, more democratic society that respects, guarantees and protects fundamental human rights, thereby fulfilling Chile's obligations under the international treaties to which it is party.

Islamic Republic of Iran

[Original: English]
[3 July 2000]

19. [...] The cultural aspects of human rights have not so far been duly treated and clearly defined. Thus, discussions on this subject have often been accompanied by distorted controversies and ambiguities which, in our view, not only present a significant obstacle to the realization of cultural rights but also weaken attempts to arrive at a universal understanding of human rights.

20. [...] While the significance and potential contribution of cultural diversity to the life of mankind is clearly highlighted [in both resolution 54/160 and the Declaration of the Principles of International Cultural Cooperation, of November 1966], there exist some rigid attitudes towards this issue. Some adopt an absolutist approach, which prohibits any attempt to incorporate culture, history or religion into an evaluation of human rights. Others reject any international instrument and hold that such an instrument may be alien to their thought, tradition or culture. Both sides, in our view, are influenced by misinterpretations of the position of cultural diversity in human rights discourse. Different cultures can contribute to and learn from each other through interaction in lieu of counter-action. The UNESCO Declaration recognizes cultural cooperation as a right and duty for all peoples and all nations, which should share with one another their knowledge and skills.

21. [...] The Islamic Republic of Iran believes that the adoption of resolution 54/160 helps to pave the way and fosters a favourable environment for a constructive dialogue on the ways and requirements of taking advantage of different cultural heritages to promote the universality of human rights. Meanwhile, it is obvious that such a dialogue requires good will, open minds and hearts, flexibility and farsightedness on the part of all interlocutors.

22. The Islamic Republic of Iran believes that the right of all peoples and nations freely to pursue their cultural development is a significant aspect of the right to self-determination. Article 1 of both the international covenants provides that "all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." In light of the above, the resolution on human rights and cultural diversity attempts to elaborate and further encourage the cultural aspect of the right to self-determination.

23. [...] Individual and collective aspects of cultural rights need to be equally born in mind and promoted internationally. Implementation of the recommendations

of the resolution can contribute considerably to the fulfilment of this national and international task.

24. In sum, the Islamic Republic of Iran is of the opinion that the adoption of resolution 54/160 by the General Assembly is a clear indication of the importance that the international community attaches to the relation between human rights and cultural diversity. At the same time it serves as an appropriate preliminary measure, facilitating the commencement of a global and constructive discourse on the issues mentioned above.

25. The Islamic Republic of Iran calls upon States, international organizations and United Nations agencies as well as civil society to pursue seriously the evolution and materialization of the objectives and principles of the General Assembly resolution on "Human rights and cultural diversity".

Libyan Arab Jamahiriya

[Original: Arabic]
[17 July 2000]

26. While the Libyan Arab Jamahiriya affirms that human rights are universal, interdependent and interrelated, it believes that such universality must not fail to take account of the cultural, historical and religious particularities of different peoples or result in the cultural hegemony of one group of States over all the other countries of the world.

27. Each nation has, indeed, the particular culture that is best suited to its own reality, and persons who belong to national, ethnic, religious or linguistic minorities must be entitled to pursue their own cultures if a community for all that guarantees respect for the human rights of each of its individual members is to be established.

28. Given its position of advocating and supporting respect for the cultural identity of all peoples as a means of ensuring the exercise of human rights and promoting tolerance, concord and solidarity among all cultures, religions and races, the Libyan Arab Jamahiriya was a sponsor of General Assembly resolution 54/160 of 17 December 1999, entitled "Human rights and cultural diversity".

29. In order to enhance cultural diversity and tolerance among peoples and thereby promote the advancement of human rights at the national and international levels, the international community must maintain and augment its efforts to refute theories and ideologies that have the aim of creating dissension and conflict between different cultures or fanaticism for one particular culture with a view to imposing a situation of hegemony and subordination on all other cultures. Every country has the right to preserve the cultural identity of its peoples, regardless of relative size or population figures. This requires the promotion of tolerance based on encouraging and protecting the cultural diversity of human societies and acknowledging the contribution made by each culture to the shaping of human civilization.

III. Replies received from relevant United Nations agencies

30. Substantive information received from relevant United Nations agencies, is summarized below.

United Nations Educational, Scientific and Cultural Organization

31. Although the United Nations Educational, Scientific and Cultural Organization (UNESCO) is working actively with a view to protect cultural diversity, the subject needs to be treated with great care, bearing in mind its complex nature. The protection of cultural diversity can easily be used as an excuse for cultural relativism, which is the negation of the principle of the universality of all human rights. UNESCO works for the affirmation of pluralistic cultural identities based on common values. The Organization's activities are aimed at teaching different groups to live together with mutual respect and acknowledging the richness of each culture. The close link between cultural diversity and human rights should always be emphasized. In implementing its activities in this field, UNESCO always keeps in mind the conclusion of the World Conference on Human Rights, which stated that while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it was the duty of States, regardless of their political, economic or cultural systems, to promote and protect all human rights and fundamental freedoms.

32. Many of UNESCO's activities and projects are in relation to cultural diversity and human rights.

33. In January 1999, UNESCO and the Commonwealth Secretariat organized a symposium entitled "Towards Constructive Pluralism" in Paris. One of the outcomes of this consultation was recognition of the need to create conditions for the development of a constructive ethnic, religious, cultural or other pluralism, while bearing in mind that a "divisive" pluralism would be a great threat to peace in the twenty-first century, since differences might be used to justify poverty, exclusion and oppression.

34. UNESCO participated in the conference "Building on Plurality: Cultures in an Evolving Global Center", organized by the European Commission and the Government of Canada in 1998 in Quebec. This theme was followed up at Vienna from 11 to 13 June 1999 at the International Conference organized by Austria on the topic "Cultural Pluralism and Global Ethics" to which UNESCO made its contribution. The next stage should be the drafting of the Vienna Manifesto on Cultural Pluralism and Global Ethics.

35. On the occasion of its fiftieth anniversary, the Swiss National Commission for UNESCO invited UNESCO to organize a conference on "Interculturalism in UNESCO: the Benefit of Diversity" at Bellizone, Switzerland, in May 1999. On that occasion, the General Assembly of the Swiss Commission adopted the Bellizone recommendation on intercultural dialogue.

36. Within the framework of the programme on global cultural diversity, financial support was given to the Youth Initiatives Supporting Centre, established by the UNESCO Federation of Clubs in Armenia in order to focus on the culture of Armenian minorities through young people.

37. In order to combat discrimination against the gypsy population, in 1998 UNESCO published the multimedia work (book and CD-ROM) entitled "Tsigane, heureux si tu es libre!", which demonstrates by words, pictures and music the cultural richness of the gypsy universe.

38. Within the framework of the Universal Forum of Cultures: Barcelona 2004, UNESCO organized, in April 1999, a workshop on the media and representation of other cultures. The same subject, with focus on the image of Islam in Western media, as well as the dialogue between civilizations (June 1999), was dealt with by the Oxford Centre for Islamic Studies, with the participation of UNESCO.

39. With a view to making the Olympic Games an instrument for international cooperation based on intercultural dialogue, UNESCO, in partnership with Greece, has committed itself to re-establishing the cultural dimension of the Games by observation of the Olympiad, whereby, throughout the four years separating the two Olympiads, a whole series of major cultural activities of global scope will be organized.

40. UNESCO, under its programme of intercultural dialogue, emphasizes two basic approaches closely linked to cultural diversity: the promotion of reciprocal knowledge of cultures and civilizations; and the interactions between cultures and civilizations. In that context, it is important to avoid the risk that the promotion of diversity be considered as the promotion of differences.

United Nations Population Fund

41. The United Nations Population Fund (UNFPA) is aware of the importance of cultural values and their linkages with population issues and with human rights. UNFPA stresses the need to respect cultural values in the design and implementation of its assistance programmes, while carefully but strongly addressing human rights issues.

42. Respect of cultural diversity is apparent in UNFPA-funded programmes and projects which vary considerably in their focus and approaches from one region to another. This has led to a better understanding of population issues and facilitated finding appropriate approaches to difficult issues, such as sexual violence, female genital mutilation (FGM), honour killings, and forced marriages. These approaches have facilitated the successful introduction of the sexual and reproductive rights of women and men on the agenda in many countries, resulting in changes in policies to protect those rights and empower women. For example, legislation banning FGM has been adopted in African countries such as Burkina Faso, Central African Republic, Ghana, Togo, Benin, Côte d'Ivoire and Senegal. Other countries such as Nigeria are in the process of doing so. In addition, a field inquiry on the progress made in the implementation of the International Conference on Population and Development reports that all but one country in Latin America and the Caribbean have taken significant policy measures and made legislative or institutional changes to protect women's rights.

43. As part of the five-year review of the implementation of the Programme of Action of the International Conference on Population and Development, UNFPA organized several regional meetings and technical symposia to discuss, among other things, the linkages between human rights, cultural values and population issues. In addition, the ongoing cooperation activities between UNFPA and the Islamic Educational Scientific and Cultural Organisation (ISESCO), a specialized institution of the Organisation of the Islamic Conference (OIC), have led to improved awareness and respect of women's reproductive rights in many member States of OIC. These cooperation activities consisted in the organization of workshops and development of educational materials with an Islamic perspective, to make them more suitable for Islamic countries. Similarly, UNFPA actively collaborates with Christian and other religious groups in the area of reproductive health and girls' education, in respect to their human rights. For example, UNFPA supports the provision of natural family planning methods for those who do not wish to use artificial methods. UNFPA has also appointed goodwill ambassadors in several countries to advocate specific human rights issues from a cultural perspective. Furthermore, UNFPA has made provision within several of its country programmes to developing short films and plays to address the linkages between cultures and human rights.

44. Finally, UNFPA supports initiatives and programmes to address the special needs of indigenous populations. These include the development of culturally sensitive reproductive health information and education programmes and services with full participation of indigenous communities which respond to their needs and respect their rights.

World Intellectual Property Organization

45. The notion of "intellectual property", defined in the 1967 Convention establishing the World Intellectual Property Organization (WIPO), is a broad concept, including productions and matter not forming part of the existing categories of intellectual property.

46. Among many activities related to intellectual property, WIPO recently decided to pay particular attention to traditional knowledge. In 1998, it undertook a set of activities designed to explore the intellectual property aspects of the protection of traditional knowledge. The main objective of these activities under the 1998-1999 budget was to identify and explore the intellectual property needs and expectations of the holders of traditional knowledge.

47. WIPO conducted nine fact-finding missions to 28 countries, designed to gain a sense of the needs and expectations of traditional knowledge holders. A draft report on the missions was published for comment on 3 July 2000.

48. In cooperation with UNESCO, WIPO organized four regional consultations on the protection of "expressions of folklore", which were held in Africa, Asia and the Pacific, Arab countries, and Latin America and the Caribbean. The consultations provided guidance for WIPO's future work in relation to the protection of folklore (see www.wipo.int/traditional knowledge).

49. WIPO organized two round tables to facilitate an exchange of views among policy makers, indigenous peoples and other holders of traditional knowledge on the most effective application of the intellectual property system for the protection of traditional and indigenous knowledge.

50. WIPO is organizing, in cooperation with the United Nations Environment Programme (UNEP), an on-site documentation project on the role of intellectual property rights in the sharing of benefits arising from the use of traditional knowledge and associated biological resources.

51. WIPO's exploratory work in 1998 and 1999 has shown that traditional knowledge is a rich source of creativity and innovation. WIPO's work programme for 2000-2001 biennium responds to several of the needs and expectations identified during 1998 and 1999, and includes, inter alia, the following: the development of information materials on options under the existing intellectual property system for the protection of traditional knowledge; practical, national information and training workshops on the intellectual property system and the protection of traditional knowledge; intellectual property information, training and standards for the documentation of traditional knowledge; practical studies of actual examples in which traditional knowledge has been sought under the intellectual property system; feasibility studies on the applicability of customary laws to traditional knowledge; launching a pilot project on collective acquisition, management and enforcement of

intellectual property rights in traditional knowledge, and organization of a meeting on intellectual property and genetic resources (17 and 18 April 2000, Geneva).

IV. Replies received from non-governmental organizations

52. Substantive information received from non-governmental organizations, is summarized below.

Swiss Academy of Humanities and Social Sciences

53. The Swiss Academy of Humanities and Social Sciences subscribes, in principle, to General Assembly resolution 54/160. However, an unhappy ambiguity runs through the text of the resolution regarding the relation between the rights of individuals and those of communities. The supreme value and point of reference, also in the field of cultural rights and cultural diversity, must remain the human rights of individuals. Although there are important collective rights to be taken into account, they must never overrule what is the inalienable asset of individuals.

54. At the same time, cultural diversity has its constitutive limits necessarily dictated by the respect of individual human rights and of cultural entities other than the one to which observing subjects belong. This aspect does not appear as clearly as one could rightly expect.

55. There is a need also of recognizing that the protection of cultural diversity must include the prohibition of gender discrimination.

56. Another important aspect concerns the growing domination of cultural self-realization by new technologies. The engineering of an individual's genetic property and identity should be mentioned in this context. Unfortunately, the General Assembly resolution does not give any hint as to how to tackle those problems.

Inter-Parliamentary Union

57. At the 103rd Conference of the Inter-Parliamentary Union (IPU) in Amman (Jordan), a resolution entitled "Dialogue among civilizations and cultures" was adopted on 5 May 2000. By that resolution, IPU's member parliaments commit themselves to promoting dialogue among civilizations and cultures. The Conference invited parliaments to take effective measures to maintain and promote cultural diversity at the national and international levels and to take an active part in the programmes of the United Nations and UNESCO for the dialogue among civilizations and culture and to encourage their Governments to contribute to such programmes.

58. According to paragraph 21 of the resolution, the Conference recommends that the secretariat of IPU and national parliaments, in coordination with the United Nations Secretariat and other relevant organizations, prepare the contribution of IPU to the programmes of the year 2001, the United Nations Year of Dialogue among Civilizations. Paragraph 17 already sheds some light on the focus of such a contribution by recommending that the bodies involved in the organization of the programmes do not confine themselves to awareness-building activities aimed at promoting the idea of dialogue among civilizations but rather take the opportunity of the Year to launch or encourage practical dialogues between cultures or civilizations at the local, national, regional or world level which can continue beyond the year 2001.

V. Conclusion

59. The Secretary-General welcomes the contributions made by Member States, relevant United Nations agencies and non-governmental agencies.

60. The present report highlights the increasing need to emphasize the common core values shared by all cultures. Human dignity and the right to life, freedom from want, freedom from fear and protection of human rights through the rule of law are basic values which are reflected in international human rights principles.

61. The United Nation Charter, in its article 55, stresses the integral link between international cultural cooperation, development and human rights. The Universal Declaration of Human Rights recognizes also the right of everyone "to take part in cultural life" (Article 27). The major human rights treaties, including both the Covenant on Economic, Social and Cultural Rights and the Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the

Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child, provide a normative framework for protecting cultural diversity. In her statement on the universality of human rights, at a congress organized by Weltachsen 2000 in Bonn on 11 November 1999, the United Nations High Commissioner stated that universality did not negate cultural diversity.

62. United Nations treaty monitoring bodies have considered the issue of cultural diversity and human rights in elaborating general comments, in their concluding observations/comments on States' party reports, and in decisions on individual communications.

63. In a number of general comments, the Committees address the question of cultural diversity and human rights. The Committee on Economic, Social and Cultural Rights, in its General Comment 4 on the right to adequate housing (HRI/GEN/Rev.4),considered the issue of cultural adequacy of housing and noted that the way housing is constructed, the building materials used and the policies supporting them must appropriately enable the expression of cultural identity and diversity of housing.

64. Country-specific issues related to cultural diversity and human rights have also been addressed in the periodic reporting procedure. In its decision on individual communications, the Human Rights Committee has considered the question of cultural diversity and human rights. For example, in the Lovelace case,[1] the Committee decided that there had been a violation of article 27 of the Covenant on Civil and Political Rights with regard to an Indian woman who, by having married a non-Indian, had lost her rights by national law to reside on a reserve after the breakdown of her marriage. The Committee noted that there was no place outside the reserve where her right to access to her native culture and language could be exercised in community with other members of the minority in question.

65. The Office of the United Nations High Commissioner for Human Rights (OHCHR) provides substantive and organizational support to extraconventional mechanisms and funds which support cultural diversity, including the Working Group on Indigenous Populations, the United Nations Voluntary Fund for Indigenous Populations, the Open-Ended Working Group on the Draft Declaration on Indigenous People, and the United Nations Voluntary Fund for the International Decade of the World's Indigenous People; the Special Rapporteur on the right to education; the Special Rapporteur on traditional practices affecting the health of women and children; the Special Rapporteur on the right to freedom of opinion and expression; the Special Rapporteur on the question of religious intolerance; and the Special Rapporteur of the Commission on Human Rights on contemporary forms of slavery.

66. OHCHR also makes a substantial contribution through the Human Rights Technical Cooperation Programme, especially in the context of the United Nations Decade for Human Rights Education.

Notes

[1] "Selected decisions of the Human Rights Committee under the Optional Protocol" (CCPR/C/OP), p. 6 and pp. 249 et seq.